

U.S. Department of Labor

Office of Administrative Law Judges
Heritage Plaza Bldg. - Suite 530
111 Veterans Memorial Blvd
Metairie, LA 70005

(504) 589-6201
(504) 589-6268 (FAX)



Issue Date: 25 May 2005

Case No.: 2004-SCA-15

IN THE MATTER OF

EDDIE JACKSON AND BETTY JACKSON,
Individually and Jointly,
Respondents

Appearances:

Colleen B. Nabhan, Esq.
On behalf of the Solicitor

Charles L. Dirks, III, Esq.
On behalf of the Respondents

Before: Clement J. Kennington
Administrative Law Judge

DECISION AND ORDER

This case arise out of a complaint filed by the Office of the Solicitor of the U.S. Department of Labor against Eddie Jackson and Betty Jackson, (Respondents) alleging that Respondents violated certain provisions of the McNamara -O'Hara Service Contract Act (SCA), 41 U.S.C. § 351 *et seq.*, and the regulations under 29 C.F.R. Part 4 by failing to pay service employees, Edward Johnson and Darryl Anderson (Johnson and Anderson) whom it employed as truck drivers to deliver mail to and from the U.S. Postal Service's , Baton Rouge, Louisiana, Bluebonnet Post Office, and the Baton Rouge Airport minimum monetary wages and fringe benefits required by Contract 707AD pursuant to Section 2 (a)(1) and Section 2

(a)(2) of the SCA (41 U.S.C. §§351(a)(1),(2) and by Section 4.6 (b) of 29 C.F.R. Part 4.

The Solicitor also alleged that Respondents failed to make available to authorized representatives of the Administrator of the Employment Standard Administration, U.S. Department of Labor adequate and accurate records showing the daily and weekly hours worked by its service contract employees as required by Section 4.6(g) of 29 C.F.R. Part 4. By reason of the alleged violations the Solicitor contends that Respondents are liable for the underpayment of compensation to Johnson of \$20,183.00 and to Anderson of \$10,522.00 for a total underpayment of \$30,705.00.

In accord with the provisions of the SCA and 29 C.F.R, Parts 4, 6, and 18, this case was referred to the Office of Administrative Law Judges for hearing. The undersigned conducted a hearing in Baton Rouge, Louisiana on March 23, 2005 during which all parties were given the opportunity to call and examine witnesses and introduce pertinent exhibits. At the conclusion of the hearing the parties argued orally with only the Solicitor filing a brief. Based upon a review of the entire record including witness demeanor, documents introduced and arguments made I find as follows:

I. Background

Respondent, Eddie Jackson has delivered mail for the U.S. Postal Service in Baton Rouge, Louisiana since 1980. From 1980 to 1982 Jackson personally hauled mail, and thereafter, hired truck drivers including Johnson and Anderson to make the deliveries when mail volume increased. Johnson delivered mail for Jackson over a 12 year period until January 3, 2003. Anderson delivered mail for Jackson for 11 years until May 3, 2003. (TR. 132,172, 240)¹.

On January 9, 1999, the U.S. Postal Service awarded Respondents Contract 707AD for the hauling of mail between the U.S. Postal Service Bluebonnet, Baton Rouge, Louisiana Post Office (post office) and the Baton Rouge, Louisiana airport (airport). The contract was effective June 30,1999 through July 1, 2003 with a per annum payment of \$137,652.85 and included Wage Determination No. 77-0193

¹ References to the transcript and exhibits are as follows: trial transcript-TR._____; Solicitor's exhibits-CX- ____; Respondent's exhibits-DX-_____.

Rev 26 with hourly straight time pay of \$14.41 and health and welfare fringe benefits of \$2.15 per hour. (CX-1, 3).

Section B of the contract entitled "Statement of Work and Specifications" set forth the delivery schedule and service requirements which included the following trips and time schedules:

Trip 1² leave post office at 0335 and arrive airport at 0400;
Trip 2 leave airport at 0420 and arrive post office at 0435;
Trip 3 (daily) leave post office at 0445 and arrive airport at 0510;
Trip 4 (daily) leave airport at 0550 and arrive post office at 0550;
Trip 5 (daily) leave post office at 0945 and arrive airport at 1010;
Trip 6 (daily) leave airport at 10:30 and arrive post office at 1055;
Trip 7 (daily) leave post office at 1105 and arrive airport at 1130;
Trip 8 (daily) leave airport at 1155 and return post office at 1220;
Trip 9 (daily) leave post office at 1350 and arrive airport at 1415;
Trip 10 (daily) leave airport at 1430 and arrive post office at 1455;
Trip 11 (daily) leave post office at 1615 and arrive airport at 1645;
Trip 12 (daily) leave airport at 1710 and arrive post office at 1750;
Trip 13 (daily) leave post office at 1810 and arrive airport at 1835;
Trip 14 (daily) leave airport at 1855 and arrive post office at 1920;
Trip 15 (daily) leave post office at 2305 and arrive airport at 2330;
Trip 16 (daily) leave airport at 2350 and arrive post office at 0015.

(CX-2).

Section B set forth estimate mileage of 16.3 miles from the post office to the airport with the return trip estimated at 16.8 miles for a total annual mileage of 93, 117.4 taking 5, 258 hours. Section B also notified Respondents they would be required to load and unload at each location with estimates of the time involved for such operations with the understanding that Respondents had to report in sufficient time to load and depart on schedule.

As noted above, Wage Determination No. 77-0193, Revision 26 as revised on June 24, 1999 set forth the minimum hourly rates and fringe benefits for truck driver's under the contract. The applicable minimum hourly rate for truck drivers

² (daily except Sundays, Mondays and day after New Years day, Independence Day, Labor Day, Thanksgiving Day, and Christmas May.

in this case effective July 1, 1999 was \$14.41 per hour with fringe benefits (health and welfare/pension) calculated at \$2.15 per hour plus ten paid holidays per year and additional paid vacation based upon length of service with Employer. (CX-3). Effective July 1, 2001 Wage Determination No. 77-0193 was revised with a new minimum hourly truck driver rate of \$15.22 per hour with health and welfare benefits increased to \$2.37 per hour. (CX-4, 5). On that same date the contract per annum compensation rate increased to \$149,828.58. (CX-6).

Respondents exercised complete supervision and control over Johnson and Anderson their wages, hours and working conditions. During the period from April 28, 2001 to January 3, 2003, Respondents employed Johnson to haul mail on Trips 1 through 8, Tuesday through Saturday. On Sundays Johnson worked every trip except Trip 1. Johnson was off work on Monday. During the period from April 28, 2001 to May 3, 2003, Respondents employed Anderson to haul mail on Trips 9 through 16, Tuesday through Saturday. On Monday Anderson worked every trip except Trip 1. Anderson was off work on Sunday.

II. Issues

The parties raised the following issues:

1. Whether Respondents violated the SCA by failing to pay two employee mail haulers, Edward Johnson and Darryl Anderson (Johnson and Anderson) for all the time they worked at prevailing contract wage rates.
2. Whether Respondents violated the SCA by failing to pay Johnson and Anderson appropriate contract fringe benefits.
3. Whether Respondents violated the SCA and controlling regulations by failing to maintain and provide accurate records of the number of daily and weekly hours worked by each employee.
4. Whether Respondents owed back wages under the SCA in the amount of \$10,522.36 to Johnson for the period April 28, 2001 to January 3, 2003.
5. Whether Respondents owed back wages under the SCA in the amount of \$20,183.50 to Anderson for the period from April 28, 2001 to May 3, 2003.

III. Time Worked by Johnson and Anderson

Testimony concerning the amount of time worked by Johnson and Anderson came from Andrew J. Johnson, who has worked for the U.S. Postal Service at the Bluebonnet Post Office process and distribution center since it opened about 13 years ago.³ During that period Andrew J. Johnson has been classified as a general and dispatch expediter responsible for the proper dispatch and processing of mail. In that capacity, Andrew Johnson came in daily contact with Johnson and Anderson as they picked up mail that had been graded and dispatched at the post office and delivered it to the airport from which they picked up additional mail and delivered it back to the post office. (TR. 46-49).

According to Andrew Johnson, both Johnson and Anderson had a schedule to follow involving round trips from the post office to the airport and return. Anderson and Johnson followed the schedule every day and were "absolutely dependable". (TR.50, 60). As an expediter Andrew Johnson maintained an Air Mail Messenger Trip Report on which he recorded Johnson and Anderson's departure and arrival times to and from the airport. The trip reports were not designed to measure hours worked by Johnson or Anderson and did not include unloading, loading and waiting time from 0330-0335; 0435-0445; 0940-0945; 1055-1105; 1220-1225; 1345-1350; 1455-1500; 1610-1615; 1750-1810; 1920-1925; 2300-2305. (CX-10, 13; Tr.51-54).

If no mail was available for pick up at these times Johnson and Anderson were still required to wait and check with the expediter to see if mail was available for loading and then proceed to the airport according to the schedule. (TR. 55, 65). When Johnson or Anderson arrived back from the airport Andrew Johnson was usually in the dockside expediter's office. If no mail was transported on Trips 8, 10, 14, and 16, Johnson or Anderson could not leave until Andrew Johnson

³ The parties stipulated network specialist, Nick Romero, would testify in the same manner as Andrew Johnson who admittedly was on military leave from September 12, 2001 to October 1 2002. (TR. 56, 203). The parties also stipulated that expediter Charles Adams who filled in for Andrew Johnson during his military absence would also testify in the same manner as Andrew Johnson. (TR. 77).

verified the absence of mail and they parked their truck away from the dock. (TR. 65-70).

Both Johnson and Anderson provided detailed and credible testimony about their work day. Johnson testified that he worked a consistent morning schedule, Tuesday through Saturday, which included Trips 1 through 8. Prior to Trip 1 Johnson arrived at the post office at 0300 and for the next 5 minutes checked his truck's tires and lights, backed the truck up to the dock, found the expediter who was on the dock checking trucks in and out, informed the expediter when he arrived, loaded mail or empty mail containers on the truck⁴, secured the mail containers or bins with a bar, closed the truck door, initialed or signed a Air Mail Trip report indicating departure time and drive to the airport. (TR. 132-137).

Johnson then drove to the airport in about 30 minutes. There he backed his truck up to a ramp, opened up two gates, unlocked the back of his truck, unloaded mail bins and loaded up mail for a return trip to the post office, closed the truck door, locked the gates and drove back to the post office which took about 30 minutes arriving at 0435 and completing the first round trip (Trips 1, 2) (TR. 138-141). From 0435 to 0445 Johnson would unload and load mail, check in with the expediter, and then return to the airport where he again picked up mail and arrive back at the post office at 0550, at which point he would unload mail if any and check with the expediter thereby completing the second round trip (Trips 3 and 4). At this point Johnson would take his first break. (TR. 142-145).

Johnson returned to the post office at 0940 in order to load mail and leave by 0945 repeating the same procedure he had followed for Trip 1. Once at the airport he followed the same procedures as he had done on Trip 2 arriving back at the post office at 1055 whereupon he located the expediter, initialed the trip report and unloaded his cargo, thus, completing the third round trip. (Trips 5, 6). Johnson waited at the post office until 1105 during which he loaded mail and then departed to the airport where he repeated the unloading and loading procedures as detailed in Trip 1 and drove back to the post office arriving at 1220 where he unloaded mail and checked with the expediter. (TR. 146-149). On Sunday Johnson worked by himself starting with and completing Trips 3,4,5,6,7,8,9,10, 11,12,13,14,15,16 for a total 7 round trips repeating loading and unloading procedures as described above. Johnson was off on Monday. (TR. 150-153). On Tuesday through Saturday Johnson took a break from 0550 to 0940. On Sunday Johnson took additional breaks from 1225 to 1345, 1500 to 1610 and from 1925 to 2300. (CX-13).

⁴ The truck would hold up to 14 mail carts.

On cross Johnson testified that he took a 3 week paid vacation in 2001 and 2002, and admitted that after the conclusions of Trips 8, 10, and 14 when he arrived back at the post office at 1220, 1455, and 1920 that if h e had no mail, he would have the expediter verify this and then was free to leave the post office. (TR. 154 158, 159).

Anderson also worked Tuesday through Saturday working Trips 9-16. Anderson testified that he initially arrived at the post office at 1340, check the mail, located the expediter, loaded the mail, or if none then drove to the airport where he would unload and load mail and return to the post office at about 1455 or 1500 depending upon the volume of traffic. Then he would unload mail which would take about 5 minutes followed by a break. This completed Trips 9 and 10. (TR. 173-175).

Anderson then reported back to the post office at 1600 to check with the expediter about outgoing mail and went through the same loading procedures as involved in Trip 9, departed the post office at 1615 and drove to the airport where he had to lock gates, raise his truck door, unload and load mail and return to the post office. Anderson was supposed to be back at the post office at 1750, but was frequently late except Saturday due to heavy traffic. This completed Trips 11 and 12. (TR. 176, 177).

Once back at the post office Anderson would then have to unload and load mail for a return trip to the airport. Anderson was supposed to leave the post office by 1810 but would leave after this time if he arrived late from Trip 12. Anderson frequently returned late to the post office on Trip 14 arriving at about 1930 or 1935 instead of 1920 the scheduled time. After completing unloading operation Anderson went on break thus finishing Trips 13 and 14. (TR.178).

Anderson reported back to the post office at 2250 for the 2305 run on Trip 15 and drove to the airport where he delivered and picked up mail and returned to the post office at 0015 completing Trip 15 and 16. On Monday, Anderson worked by himself doing all trips except Trips 1 and 2. (TR. 179-182). The midnight run generally had mail to be delivered. (TR. 187,188).

Jackson acknowledged that Contract 707 AD provided that: (1) the "supplier" (Respondents) may be required to load and unload; (2) estimated averages of loading and unloading times at the post office and airport ranging from 5 to 15 minutes; and (3) and required "supplier" to report in

sufficient time to load and depart on schedule. (CX-2; TR. 82-85). Jackson admitted that Johnson and Anderson were required to load and unload mail and that the Air Mail Messenger Trip Reports did not reflect loading and unloading, and waiting times and was not intended or use as a time sheet to reflects hours worked by Johnson and Anderson and that he paid them 56 hours every two week based on what he said as opposed to actual time records. When called by his counsel, Jackson contradicted himself saying the trip reports show times worked and that Johnson and Anderson filled out the trip schedules and were paid on the basis of what they reported. (Tr.119-129; 241-244). Jackson testified that if Johnson arrived at 1420 and had no mail he was free to leave as he was when returning at 1455 and 1920.

Concerning the issue of time records, the record contains only two documents, C-11 and DX 1, 2. Credible testimony from both Johnson and Andersons show CX-11 did not reflect hours worked, but rather, was a poor attempt by Jackson to create a weekly time sheet by having Johnson and Anderson sign off on the sheet indicating times dictated by Jackson or filled out by someone else as opposed to times actually work. (Tr. 160-166, 193-201). DX-1 the Air Mail Trip report initialed by Anderson and Johnson shows departure and arrival times and volume of mail handled, but omits any records for substantial period of time from April 28, 2001 to December 31, 2002 including: April 2, May 4, 10,11,24; June 4, 28, 29; July 6 to 13; August 6, 13 to 30; September 1, 3 to 5, 18, 22 to 24, October 9, 24 to 31; November 1 to 7, 10-15; 21 to 24; December 3, 8, and 9. DX-2, the trip reports for calendar year 2002 which was also initialed by Anderson and Johnson showing departure and arrival times and mail volumes omits records for the following days: January 13 to 15, 19-31; February 1, 4, 11 to 24; March 16 to 31; April 1 to 24; June 7, 22 to 30; July 1 to 5, 8, 11 to 24; August 1 to 11, 24 to 31; September 1 to 6, 9, 20; October 3 to 11, 22 to 26, November 13,14, December 11 to 22, 26 to 31.

Thus, it is clear that Respondent did not maintain or keep accurate time records reflecting the time worked by Johnson and Anderson, thereby requiring the Solicitor to prove by just and reasonable inference the amount and extent of work performed by Johnson and Anderson in accord with *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946).

To meet that burden the Solicitor called Karen Clampitt, Assistant Director of the New Orleans District Office for DOL's Wage and Hour Division. Ms. Clampitt oversaw the investigation involving Respondents. Ms. Clampitt credited Anderson with working the following hours:

Tuesday through Saturday 1345 to 1500, (1 hr.15 minutes); 1610 to 1925, (3 hours 15 minutes), and 2300 to 0015, (1 hour 15 minutes) for a total of 5.75. The first calculation of 1 hour 15 minutes included 5 minutes between 1345 and 1350 for loading and waiting time prior to scheduled driving time for Trip 9, actual scheduled departure and arrival times for Trips 9 and 10, and 5 minutes unloading and wait time at the conclusion of Trip 10. The second calculation of 3 hours and 15 minutes included 5 minutes loading, and waiting time prior to scheduled driving time for Trip 11, actual scheduled departure and arrival times for Trips 11 to 14 with 5 minutes unloading time at the conclusion of Trip 14. The third calculation of 1 hour and 15 minutes included 5 minutes of loading and waiting time prior to scheduled driving time for Trip 15 plus actual scheduled departure and arrival times for Trips 15 and 16. For Mondays when Anderson worked additional time covering Trips 3 to 8, Ms. Clampitt added 1 hour and 10 minutes for the time period from 1640 to 1750 reflecting 5 minutes of loading and waiting time prior to Trip 3, plus actual scheduled departure and arrival times for Trip 3 and 4 and 2 hours and 45 minutes for the time period from 1140 to 1425 reflecting loading and waiting time prior to Trip 5, plus actual scheduled departure and arrival times for Trips 5 to 8, plus 5 minutes of unloading time at the conclusion of Trip 8 resulting in a total of 9.67 hours on Monday for a total of 38.42 hours per week.

For Johnson Ms. Clampitt calculated 5 hours per day, Tuesday to Saturday crediting Johnson with 2 hours and 20 minutes from 0330 to 0550 am and 2 hours and 45 minutes from 0940 to 1225. The first calculation of 2 hours and 20 minutes included 5 minutes of loading and waiting time prior to Trip 1 plus actual scheduled departure and arrival times for Trips 1 to 4 and 10 minutes of loading, unloading, and waiting time prior to Trip 3. The second calculation of 2 hours and 45 minutes included 5 minutes of waiting and loading time prior to Trip 5, plus actual scheduled departure and arrival times for Trips 5 to 8, plus 5 minutes of unloading and waiting time at the conclusion of Trip 8. Johnson worked the same schedule on Sunday of 9.67 hours as did Anderson on Monday. (CX-9, 13; TR. 205-215). Johnson worked a total of 34.67 hours per week. (CX-9, p.13).

Based on the contract loading and delivery schedule requirements and the credible testimony of Postal Officials, Andrew Johnson, Nick Romero, Charles Adams, DOL employee Karen Clampitt and drivers Anderson and Johnson, I find Ms Clampitt's estimation of hours work to constitute a reasonable and accurate estimation of the hours worked by Anderson and Johnson. Johnson adhered to

schedule times. Anderson adhered to scheduled times except when traffic became very heavy, on which occasions he had to spend more time in driving to and from the post office and airport. Johnson and Anderson were required to report prior to departure either to load or to wait upon the expeditor who would inform them of the quantity of mail to load and delivery. On those occasions when they returned to the post office without mail they still had to wait by the dock to meet with the expeditor who had to verify their truck was empty after which they removed the truck from the dock area. This took time, and it is not unreasonable to assume such a process taking 5 minutes.

Respondents would have me deduct 5 minutes from the time accredited to Anderson and Johnson at the conclusion of Trips 8, 10, and 14 on the basis that 90% of those trips involved no mail hauling. However, a review of Respondents Trip reports, DX-1 and DX-2, shows significant mail hauling on those trips. For example of the 13 days of trip reports submitted for April, 2001 mail was hauled on all 13 days on Trips 8, 10, and 14 with the exception of 3 out of 39 occasions.

Respondents offered no evidence to show the precise amount of work performed or evidence to negative the reasonableness of the inference to be drawn from the employee's evidence as required under *Mt. Clemens Pottery* at 687,688. The ARB has consistently upheld the principles enunciated in *Mt. Clemens Pottery* as noted in the cases cited by Counsel for the Solicitor, including the recent case of *Administrator v. Groberg Trucking, Inc.*, ARB Case No 03-137 (Nov. 30, 2004). Times spent in waiting for mail, as well as time spent loading and unloading mail, are all compensable. *Sidney W. Johnson d/b/a Southwestern films Service*, BSCA No. 82-SCA-1390 (Sept. 28, 1990); *Joy R. Manning d/b/a Manning Mail Service*, BSCA No. 82-SCA-136 (Sept. 28, 1990).

IV. Amount of Compensation Due Johnson and Anderson

Anderson worked 38.42 hours per week (Tuesday to Saturday, 5.75 hours per day, plus 9.67 hours on Monday. Respondents paid Anderson for only 28 hours per week resulting in 10.42 unpaid hours per week. For the period of April 28, 2001 to September 15, 2001 he was paid \$14.41 + \$2.15 in fringes when in fact he was due \$15.22 + \$2.37 commencing July 1, 2001. Anderson was underpaid the following amounts:

<u>Time Period</u>	<u>Amount Due</u>
4/28/01 to 6/30/01	10.42 unpaid hours x \$14.41 + \$2.15 (fringes) x 9 weeks = \$1,553.00.
7/7/01 to 9/15/01	10.42 unpaid hours x \$15.22 + \$2.37 (fringes) x 11 weeks = \$2,016.17. 28 paid hours x \$.81 (\$15.22-\$14.41) + \$.22 (\$2.37-\$2.15) (fringes) = \$28.84 x 11 weeks= \$317.24.
9/22/01 to 5/3/03	10.42 unpaid hours x \$15.22 + \$2.37 (fringes) x 84 weeks = \$15,396.18.
	Vacation - unpaid hours - 10.42 unpaid hours x \$14.41 x 6 weeks = \$900.91.
	Total due Anderson (\$1,553.00 + \$317.24 + \$2,016.17 \$15,396.18 + \$900.91 = \$20,183.50.

Johnson worked 34.67 hours per week from April 28, 2001 to January 3, 2003, but was paid for only 28 hours per week resulting in 6.67 unpaid hours per week. From April 28, 2001 to June 30, 2001 Respondent's were required to pay Johnson \$14.41 per hour, plus \$2.15 in fringes and \$15.22 per hour, plus \$2.37 in fringes from July 1, 2001 to January 3, 2003. Respondent's paid Johnson \$14.41 per hour, plus \$2.15 in fringes from April 28, 2001 to September 8, 2001 and thereafter, \$15.22 per hour, plus \$2.37 in fringes, resulting in an additional underpayment. Johnson is due the following amounts:

<u>Time Period</u>	<u>Amount Due</u>
4/28/01 to 6/30/01	6.67 unpaid hours x \$14.41 + 2.15 (fringes) x 9weeks = \$994.10.
7/7/01 to 9/1/01	28 paid hours x \$.81 (\$15.22- \$14.41) +\$.22 (\$2.37-\$2.15 (fringes) = \$28.84 x 9 weeks = \$259.56.
	6.67 unpaid hours x \$15.22 = \$2.37 (fringes) x 9 weeks = \$1,005.93.

9/8/01 to 1/3/03 6.67 unpaid hours x \$15.22 = \$2.37 (fringes)
 x 70 weeks = \$8,212.77.

Total due Johnson: \$944.10; \$259.56; \$1,055.93; \$8,212.77 = \$10,522.36.

V. Failure to Maintain and Provide Accurate Records

The SCA and implementing regulations clearly require federal contractors such as Respondents to not only pay service employees proper hourly rates and fringe benefits, but also to maintain accurate records reflecting hours worked by service employees. 29 C.F.R. §§ 4.166; 4.178; 4.6 (g)(1). In addition, federal contractors are required to make these records available for inspection by authorized representatives of the Wage and Hour Division. Failure to make or maintain such records constitutes a violation of the regulations and permits the contracting officer upon direction from DOL and after notification to the contractor to cause the suspension of payments. 29 C.F.R. § 4.6 (g)(3).

In this case, it is clear that Respondents failed to maintain and provide DOL with the proper wage records. The Trip reports which Respondents produced fail to indicate waiting, loading, and unloading times. Further, as noted above many daily Trips reports were missing for relevant time periods in 2001 and 2002. The ARB has consistently upheld the obligation of SCA contractors to maintain accurate wage records so that hours of work and fringe benefits can be determined. *United Kleenist Organization Corp.*, 1999-SCA-18 (ALJ Jan. 10, 2000), *aff'd* ARB Case No. 0042 (ARB January 25, 2002); *Hugo Reforestation, Inc.*, ARB Case No. 99-003, 1997-SCA-20. (ARB April 30, 2001).

VI. Conclusions of Law

Based upon the foregoing I find as follows

1. Johnson drove a truck hauling mail for Respondents under Contract 707 AD from the Bluebonnet, Baton Rouge, Louisiana, U.S. Post Office (post office) to the Baton Rouge, Louisiana Airport (airport), and back to the post office on a

consistent 6 day a week basis, (Sunday, Tuesday through Saturday), from April 28, 2001 through January 3, 2003.

2. From April 28, 2001 through January 3, 2003, Johnson, while hauling mail for Respondents, worked a total of 34.67 hours per week, but Respondents paid him for only 28 hours per week.

3. Anderson drove a truck hauling mail for Respondents under Contract 707 AD from the post office to airport, and back to the post office on a consistent 6 day a week basis, (Monday-Saturday) from April 28, 2001 to May 3, 2003.

4. From April 28, 2001 through May 3, 2003, Anderson, while hauling mail for Respondents, worked a total of 38.42 hours per week, but Respondents paid him for only 28 hours per week.

5. Respondents not only failed to pay Johnson and Anderson for the number of hours they worked each week, but they also failed to pay them the appropriate minimum increases in hourly rates of pay and fringe benefits when they were due, effective July 1, 2001 at which time the hourly rate increased from \$14.41 to \$15.22 and the fringe benefits rate increased from \$2.15 to \$2.37 per hour.

6. Respondents owe Johnson a total of \$10,522.36 in unpaid wage and fringe benefits for work performed from April 28, 2001 through January 3, 2003 hauling mail under Contract 707 AD.

7. Respondents owe Anderson a total of \$20,183.50 in unpaid wages and fringe benefits for work performed from April 28, 2001 through May 3, 2003, hauling mail under Contract 707 AD.

8. Respondents failed to maintain and make available to authorized representatives of DOL adequate and accurate records showing the hours worked by Johnson and Anderson during the period from April 28, 2001 through May 3, 2003.

9. Respondents violated the SCA and its implementing regulations by failing to pay Johnson and Anderson the appropriate hourly minimum wage and fringe benefits and by failing to maintain and make available to authorized DOL representative accurate payroll records showing hours worked by Johnson and Anderson.

VII. ORDER

IT IS HEREBY ORDERED that:

1. Respondents owe Johnson the sum of \$10,522.00 representing unpaid wages and fringe benefits for mail hauling services which he provided Respondents under Contract 707 AD from April 28, 2001 through January 3, 2003.
2. Respondents owe Anderson the sum of \$20,183.00 representing unpaid wages and fringe benefits for mail hauling services which he provided Respondents under Contract 707 AD from April 28, 2001 through May 3, 2003.
3. The U.S. Post Service is authorized to withhold from Respondents the sum of \$30,705.00 and to reimburse from such monies the amounts Respondents owe Johnson and Anderson as set forth above.

A

CLEMENT J. KENNINGTON
ADMINISTRATIVE LAW JUDGE